

SENATE No. 256.

Commonwealth of Massachusetts.

SENATE, April 10, 1884.

The Committee on Harbors and Public Lands, to whom was referred the petition of the Cape Cod Canal Company, the petition of the Old Colony Railroad Company, petition of A. F. Swift and others, J. F. Jones and others, report the accompanying Bill.

For the Committee,

OWEN A. GALVIN.

Messrs. FRANK S. STEVENS, of the Senate, and Messrs. BUTTERFIELD, ALMY and CROWELL, of the House, dissent.

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Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Eighty-four.

AN ACT

In relation to the Cape Cod Canal Company.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The Cape Cod Ship Canal Com-
2 pany, within six months from the passage of this
3 act, may vary the location of its canal by altering
4 the route thereof at or near Monument Station,
5 so called, and thence extending the same to Buz-
6 zard's Bay through Back River, so called, and
7 may make other changes in its location, as already
8 filed, subject to the provisions of this section.
9 It shall pay all damages occasioned by laying
10 out, making and maintaining its canal, or by tak-
11 ing land or materials therefor, and such damages
12 on the application of either party shall be esti-
13 mated by the county commissioners in the manner
14 provided with reference to the laying out of rail-
15 roads. Either party dissatisfied with the estimate
16 of the county commissioners may, at any time

17 within one year after it is completed and returned,
18 apply by petition to the superior court for Barn-
19 stable County for a jury to assess the damages,
20 and like proceedings shall be had thereon as in pro-
21 ceedings for damages for laying out of railroads.
22 Said canal company may file with the county
23 commissioners of the county of Barnstable a
24 written withdrawal of any part or parts of the
25 original location, describing the same by metes
26 and bounds, and so far as the land or other prop-
27 erty covered by said written withdrawal is con-
28 cerned, damages may be recovered to the extent
29 that any person has been injured by the proceed-
30 ings in the manner hereinbefore provided.

1 SECT. 2. Section seven of chapter two hun-
2 dred and fifty-nine of the acts of the year eight-
3 teen hundred and eighty-three is hereby amended
4 so as to read as follows:

5 It shall be the duty of the Old Colony Railroad
6 Company so to alter its location as to cross the
7 said canal but once, unless said railroad company
8 and said canal company shall agree otherwise, and
9 they may so agree and fix the places of crossing.
10 If there is but one crossing it shall be at a point
11 to be fixed by the board of railroad com-
12 missioners in case the railroad company and canal
13 company do not agree upon the same, which point
14 of crossing said companies are hereby authorized
15 to fix. The board of railroad commissioners, after
16 due notice to all parties interested and hearing of
17 all who shall appear, shall also determine and pre-

18 scribe in writing the time when and the manner
19 in which the old Colony Railroad Company shall
20 alter its location so as to cross said canal at such
21 point; and in making such alterations said rail-
22 road corporation shall have all the powers and
23 privileges and be subject to all the duties, re-
24 strictions and liabilities set forth in all general
25 laws relating to railroads, except that the dam-
26 ages of landowners shall be assessed against
27 and paid by said canal company, as in case of
28 land taken for railroad purposes. The Cape
29 Cod Ship Canal Company shall thereupon pro-
30 ceed to build the railroad upon the new loca-
31 tion and complete the same in such manner
32 and at such time as may be prescribed by the
33 railroad commissioners, and to their satisfaction,
34 in case the parties do not agree upon the same;
35 and shall pay all damages caused by the con-
36 struction of said railroad upon such new location,
37 and shall be liable for such damages as in the
38 case of the construction of railroads. Said
39 canal company shall pay to said railroad com-
40 pany all damages for the increased length
41 of the line of said railroad, to be ascertained
42 and determined upon application of either party
43 in the manner provided by law for estimat-
44 ing the damages occasioned by the laying out of
45 railroads. The Cape Cod Ship Canal Company
46 shall also build and maintain, and keep in re-
47 pair a bridge or bridges across said canal, suit-
48 able for the passing of the railroad, which said
49 bridges shall each have a suitable draw for the

50 passage of vessels, and shall be constructed and
51 maintained under the supervision of the board
52 of railroad commissioners. Said railroad com-
53 pany shall appoint a steady and discreet super-
54 intendent, and all necessary assistants for each
55 drawbridge, who shall be paid by said canal
56 company a reasonable compensation, to be fixed
57 by the railroad commissioners. Said superin-
58 tendent shall have full control and direction
59 of the passing of vessels through the draw,
60 and of trains over the bridge, and with said
61 assistants shall be subject to such rules and
62 regulations, not inconsistent with law, as said
63 railroad and canal company shall from time to
64 time prescribe for the operation of said bridge;
65 but such rules and regulations shall be sub-
66 ject to approval and alteration by the said
67 board of railroad commissioners. And said su-
68 perintendent and assistants shall be subject to
69 removal by said board of railroad commissioners.

1 SECT. 3. Section nine of chapter two hundred
2 and fifty-nine of the acts of eighteen hundred and
3 eighty-three is hereby amended by adding at the
4 end thereof the words and the land upon the
5 abandoned location of the Old Colony Railroad
6 Company shall thereupon become the property of
7 said canal company so far as the same may be
8 within the limits of the location of the canal.

1 SECT. 4. Section thirteen of chapter two hun-
2 dred and fifty-nine of the acts of eighteen hundred

3 and eighty-three is amended so as to read as
4 follows:—

5 *Sect. 13.* The said canal company shall pro-
6 vide and maintain at Monument, North Sand-
7 wich, and at West Sandwich, at such points as
8 may be designated by the county commissioners,
9 suitable ferries across their canal for passengers
10 and teams, to be operated free from tolls, under
11 rules to be established by the county commission-
12 ers. Said canal company shall forfeit fifty dollars
13 for each day it shall fail to provide and maintain
14 such ferries, to be recovered upon complaint or
15 indictment in the county of Barnstable to the use
16 of said county.

1 SECT. 5. Section fourteen of chapter two hun-
2 dred and fifty-nine of the acts of the year eighteen
3 hundred and eighty-three is amended so as to
4 read as follows:—

5 *Sect. 14.* The said canal company shall also
6 construct such highways to connect with the
7 ferries provided for in section four of this act,
8 and such other highways as may be necessary to
9 replace the highways destroyed by the construc-
10 tion of said canal, in such manner and at such
11 time as the county commissioners for the county
12 of Barnstable shall prescribe, upon each side of
13 said ferries. After the completion of such high-
14 ways, and their acceptance by the said county
15 commissioners, the said canal company shall not
16 be responsible in any manner for the further main-
17 tenance of the same.

1 SECT. 6. Said corporation shall not be required
2 to pay any state or local taxes for five years from
3 the passage of this act.

1 SECT. 7. Section two of chapter two hundred
2 and fifty-nine of the acts of the year eighteen
3 hundred and eighty-three is amended by adding
4 at the end thereof the following words: And
5 the construction and maintenance of said canal,
6 with the necessary breakwaters, wharves, locks,
7 docks and other structures, shall be subject to the
8 supervision of the harbor and land commis-
9 sioners. But nothing herein contained shall be so
10 construed as to require the building of locks in
11 said canal unless a board of three competent
12 engineers appointed by the governor, with the
13 advice and consent of the council, shall decide
14 that they are necessary. The compensation of
15 said engineers shall be fixed by the governor and
16 council, and paid by the treasurer of the Com-
17 monwealth. Said canal company shall pay to the
18 treasurer of the Commonwealth such sum of
19 money as shall be necessary to pay for the
20 services and expenses of said board of engi-
21 neers. The materials excavated from the tide
22 waters in Buzzard's Bay and Barnstable Bay
23 shall be so disposed of, under the direction of the
24 harbor and land commissioners, as not to interfere
25 with the fishing interests, and the material ex-
26 cavated shall be deposited within the limits of the
27 location of the canal as far as practicable, under

28 the direction of the harbor and land commis-
29 sioners.

1 SECT. 8. The charter, corporate existence,
2 organization and location of said canal company
3 are hereby recognized, ratified and affirmed.

1 SECT. 9. To defray the expenses and recom-
2 pense the services of the county commissioners
3 under the charter of said canal company and this
4 act, it shall be the duty of said canal company to
5 pay each of said commissioners the sum of six
6 dollars per day for the time actually consumed in
7 discharging their duties: *provided, however,* that
8 said canal company shall not be required to pay
9 either of said commissioners for more than fifty
10 days' service in any year.

1 SECT. 10. This act shall take effect upon its
2 passage.

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